REMARKS

I. Introduction

Claims **19**, **23**, **26**, **28-29**, **49**, and **53-83** are currently pending in the present application (with claims **82-83** having been withdrawn from consideration). Of the claims remaining for consideration, claims **19**, **49**, **53**, **64**, **72**, **76**, and **80-81** are independent.

All claims remaining for consideration (claims **19**, **23**, **26**, **28-29**, **49**, and **53-81**) stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 4,654,800 (hereinafter "Hayashi") in view of U.S. Patent No. 5,780,133 (hereinafter "Engstrom").

Upon entry of this amendment, which is respectfully requested, claims **82-83** (which were previously withdrawn from consideration) will be cancelled without prejudice or disclaimer and new claims **84-90** will be added. No new matter is believed to be introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.114.

II. The Examiner's 35 U.S.C. §103(a) Ground for Rejection

All claims remaining for consideration (claims **19**, **23**, **26**, **28-29**, **49**, and **53-81**) stand solely rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Hayashi in view of Engstrom. Applicants respectfully traverse this ground for rejection as follows.

A. No *Prima Facie* Case of Obviousness

One of the references relied upon by the Examiner to formulate the current §103(a) ground for rejection is not analogous to the pending claims and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. At least for these reasons, as described in more detail hereinafter, the Examiner has failed to establish a *prima facie* case for obviousness.

1. Non-Analogous Art

Applicants respectfully note that Engstrom is non-analogous art. Engstrom is certainly not within the vending arts, for example, nor is Engstrom directed to any problem solved by the pending claims. There is simply no evidence on record that shows how Engstrom may be related to (much less direct to) any of the problems solved by the pending claims – *e.g.*, moving undesirable inventory out of a vending machine.

Accordingly, at least because Engstrom is non-analogous art, the Examiner has failed to set forth a *prima facie* case for obviousness, and the §103(a) ground for rejection of claims **19**, **23**, **26**, **28-29**, **49**, and **53-81** should therefore be withdrawn.

2. No Factual Inquiries Resolved

Applicants respectfully note that the factual inquires that must be resolved to establish a prima facie case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of ordinary skill in the pertinent art; (iv) and consider objective evidence (e.g., secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a *prima facie* case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Hayashi and Engstrom, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a *prima facie* case for obviousness, and the §103(a) ground for rejection of claims **19**, **23**, **26**, **28-29**, **49**, and **53-81** should therefore be withdrawn.

III. New Claims

New claims **84-90** are believed to be patentable over the cited reference at least for the reasons otherwise presented herein. Further, after reviewing the cited references,

Applicants believe that the cited references fails to teach, suggest, or render obvious, alone or in combination, at least:

(i) *a vending machine operable to automatically select, based on stored data, a mystery product from a plurality of products available for sale via the vending machine* (claims **84-89**);

(ii) *a vending machine operable to sell the mystery product to a customer without revealing, until after the customer has committed to the sale, which product was automatically selected as the mystery product* (claims **84-89**);

(iii) *a vending machine operable to automatically select, based on stored data, a particular unit from the plurality of units that is most desirable to move out of the vending machine* (claims **90-94**); or

(iv) *a vending machine operable to sell the particular selected unit to a customer as a mystery product, without revealing, until after the customer has committed to the sale, which product type the mystery product belongs to* (claims **90-94**).

IV. Conclusion

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via e-mail at cfincham@walkerdigital.com, at the Examiner's convenience.

V. Fees and Petition for Extension of Time to Respond

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

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